IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3553 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI DHULABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

Mr. AD Oza, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/05/2001

ORAL JUDGEMENT

Heard Mr.S.A. Shah, learned advocate for the petitioner and Mr.A.D.Oza, learned Public Prosecutor on behalf of the respondent State.

"The relief has to be granted by the Court according to sound legal principles and ex debito justitiae. The Court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. While exercising the powers, the Court must keep in mind the well settled principles of justice and fair play and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum."

[Extract : Vaish Degree College Vs. Laxminarayan reported in AIR 1976 SC page 888]

"Law cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, rule of law must run akin to rule of life. And life of law is not logic but experience ..' While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction."

[Extract : Municipal Board, Pratapgadh Vs. M.S.Chawla reported in AIR 1982 SC page 1493]

"Article 226 grants an extraordinary remedy which is essentially discretionary although founded on legal inquiry. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects;

`Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependant upon considerations as of public interest."

[Extract : Shivshankar Dal Mill Vs. State of Hyryana reported in AIR 1980 SC page 1037]

Rule. Mr.A.D.Oza, learned Public Prosecutor waives service of Rule on behalf of the respondent State.

#. The brief facts of the present petition are as under :-

The petitioner herein came to be accused in connection with the CR No. 54 of 2001 registered at Satelite Police Station, Ahmedabad for the offence punishable under section 304,418, 120B read with section 114 of the IP Code and section 42 of the Gujarat Ownership Flat Act, 1973 for the contravention of the provisions of section 3(1)(c)(d) 7(1) of the Said Act. The incident in question took place on 26.1.2001 at about 8.45 a.m. for which a complaint came to be filed on 2.2.2001 at about 5.00 p.m. by one Shri Sanjaybhai Kantilal Bhavsar. It is the case of the complainant in the complaint that on account of the earth quake that struck Ahmedabad City on 26.1.2001, "B" Block of Ayodhya Apartments situated in Satelite Area collapsed leading to death of as many as five persons and the collapse of the said building has taken place on account of poor quality of construction. That the petitioner herein is one of the partner in the firm namely M/s. RK Developers which came into existence in the month of January, 1995 with an intention to carry on the business of estate developers, organizer, builder and contractor and as a general merchant and commission agent and leasing or hire purchase of machineries and other assets or any other business as may be agreed upon between the partners. It is also the case of the petitioner that after the arrest of the petitioner, other partners of the firm submitted representation to the senior PI, Satelite Police Station on 22.4.2001 inter alia revealing several aspects which could have led to the collapse of the B Block of the said Apartment. The firm of the petitioner, though having pointed out numerous aspects pertaining to collapse of the said building, yet, instead of investigating into the said aspect and making detailed inquiry into the pros and cons of the averments revealed in the representation made by the firm of the petitioner, the IO concerned, for no rhyme or reason, without any material on record in order to justify the arrest of the petitioner, simpliciter submitted the chargesheet against the petitioner and others on 24.4.2001 before the competent court. According to the petitioner, upon perusal of the chargesheet, it transpires that the IO have recorded statements of several witnesses and have drawn panchanamas of the site of incident, seizure of certain documents from AUDA etc.

#. Learned advocate Mr.Saurin Shah has prepared draft undertaking and copy of the said draft undertaking has also been given to the learned PP Shri A.D.Oza. However, Mr.A.D.Oza, learned PP has verified the statement made by the present petitioner in the draft undertaking. Mr. Shah has produced the draft undertaking to be filed by the petitioner which reads as under:

"I, Kanubhai Dhulabhai Patel (hereinafter be referred to as "the petitioner"), Shri Ramanbhai Dhulabhai Paten and Kantibhai Dhulabhai Patel, partners of M/s. RK Developers, do hereby undertake before the Hon'ble Court and state as under:

1. That the petitioner Kanubhai Dhulabhai Patel and his partners namely Ramanbhai Dhulabhai Patel and kantibhai Dhulabhai Patel carried on the business of construction in the name of M/s. RK Developers since January, 1995 and in that process had constructed Ayodhya Apartment consisting of A and B Blocks whereby B Block of Ayodhya Apartment collapsed leading to death of five persons of B BLock of Ayodhya Apartments.

2. That on 26.1.2001, B Block of Ayodhya Apartments collapsed due to earthquake and on learning the same, the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel who resides at nearby place of Ayodhya Apartments immediately rushed to the said place and made efforts by removing the debris of the collapsed building with a hope of rescuing the life of any person who got entangled amongst the debris of the collapsed building and the said aspect was reported in the local newspaper Sandesh dated 30.1.2001.

3. That the present petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers undertake before this Hon'ble Court that the B Block collapsed building of Ayodhya Apartment was constructed by their firm M/s. RK Developers, undertake to reconstruct and restore all the sixteen flats entirely at their costs.

4. That the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers undertake to complete the construction by erecting the

sixteen flats within 30 months from today and further undertake to put the respective flat owners of the B BLock of Ayodhya Apartments in actual possession of the reconstructed flats.

5. That the petitioner and his partners,namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers further undertake before this Hon'ble COurt that any failure on their part to deliver the possession of reconstructed flat to the respective owner/s by the end of 30 months from today, then the sum of rs.5,000.00 per month to each of such flat owner shall be paid toward rent and/or compensation.

6. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, further make it clear that if any of the flat owners who were resident of B Block of Ayodhya Apartments chooses not to have a reconstructed flat, then, the amount received from such flat owner/s shall be paid back.

7. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, also are ready to pay Rs.75000.00 to the legal heirs of the deceased within two months from today.

8. That the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, however, make it clear that none of the flat owners of B Block of Ayodhya Apartmenrts would be compelled in any way to give any contribution by resorting to any litigation of any nature.

9. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers put their respective signatures herein below and undertake before the Hon'ble Court to comply with the aforesaid aspects in its true spirit.

Signed and executed on_____day of May, 2001 at Ahmedabad.

_____

_____

_____"

#. In the present petition, this Court has issued notice on 11.5.2001 and it was made returnable on 18.5.2001 on which date the matter was adjourned and thereafter it was taken up for hearing today. In this petition, the respondent State has not filed any reply.

According to the petitioner, after his arrest, he has preferred an application for bail being misc. criminal application no. 911 of 2001 which came to be disposed of by this court vide order dated 19th February, 2001 and thereafter, the petitioner has preferred application for bail before the court of the learned sessions judge concerned after filing of the chargesheet being misc. criminal application no. 270 of 2001 which came to be rejected by the court concerned vide order dated 5th May, 2001 and, thereafter, the present application has been filed by the petitioner.

In this petition, notice has been issued to the Respondent State by this Court and the respondent - State has not filed reply. It is also necessary to note one fact that chargesheet has been submitted against the present petitioner. Though the State has not chosen to file the reply in this petition for bail, the learned Public Prosecutor Mr.A.D.Oza has vehemently opposed the bail application filed by the present petitioner on the ground that during the course of investigation it also found that two pent houses were illegally constructed without taking the permission from the competent authority. It is further contended in the reply that the petitioner was knowing the above illegal construction which was the main reason of the collapse of the building. It is further contended that there were other multistoried building still standing nearby which clearly shows that the building used by the builder is substandard and not upto the mark. Mr.Oza, learned PP has further submitted that FSL team consisting of Officer from FSL as well as NCB expert from Hyderabad visited the site and have collected the samples of columns, beams, rods and steel and the same samples have been sent to the laboratory of National Council for Cement and Building Material, New Delhi. It is further submitted that the report from the said Laboratory is still awaited and the samples of soils was also sent for testing at Hyderabad and its report is still awaited. Mr.A.D.Oza, learned PP has also submitted that from the laboratory report from FSL against the present petitioner has been received,

wherein the fact is established that there was poor construction which resulted into collapse of building. Mr.Oza, learned PP has also objected the undertaking which has been suggested by the petitioner and he also submitted that this petition has been filed by the petitioner is prior to filing of the chargesheet and therefore now the chargesheet is submitted against the present petitioner and therefore the petition is not maintainable. Mr.Oza, learned PP has also submitted that considering the charges levelled under provisions of Section 304 of IPC, which itself indicate the offence is very serious in nature and the same requires consideration and therefore the present application deserves to be rejected accordingly. Mr.A.D.Oza, learned PP has also submitted that looking to the peculiar facts and circumstances of this case, the petitioner has come forward to file undertaking and this Court is considering the undertaking of the present petitioner. Therefore, Mr.Oza, learned PP has submitted that only on this ground, no reasoned order may be passed otherwise it will come into way of the respondent - State Government while opposing bail application filed by other similarly situated builders.

#. I have considered the averments made in the present application and also considering the statement of Mr.Shah learned advocate for the petitioner in respect of the draft undertaking so also considering the submissions made by both the learned advocates for the respective parties without deciding the merits of the matter and considering the request of both the learned advocates for the parties who requested not to pass reasoned order and therefore considering the matter and before passing the final order, according to my opinion, some observations made by the Apex Court as well as Division Bench of this Court while dealing with such application which are pertinent to quote in relevance of the facts and circumstances of this case which are reproduced as under:-

Recently, the Apex Court in case of GAYA PRASAD V. PRADEEP SRIVASTAVA reported in (2001) 2 SCC page 604, para-19 observed as under :-

"The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal

measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the Country."

There is recent observation of the Apex Court in case of MAKAHN LAL BANGAL V. MANAS BHUNIA, reported in (2001) 2, SCC 652, para-26,

"An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of a just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously - cannot be subdued. However, sensitive the subject matter of trial may be; the courtroom is no place of play for passions, emotions and surcharged enthusiasm."

Recent observation of the Apex Court in case of GOVERNMENT OF A.P. V. A.P. JAISWAL reported in (2001), 1 SCC 748, para-24 which runs as under :

"Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice."

There is recent observation of the Division Bench of this Court in case of PEOPLES UNION FOR C.L. VS. STATE [Coram : D.M.Dharmadhikari, C.J.] reported in 2001 (1) G.L.R., page 547 observed that;

"A Judge on assuming office during his tenure

sits cut-off from the society as he cannot continue to be in public life, but as he also comes from the society with his own experience of it, he is better stationed at a distance from the problems of the society to view them in a more objective, detached and dispassionate manner, than those involved in it, and for that reason, he is more suited to resolve conflicts and competing claims of the individual and the society. [para 22]".

The Apex Court in a decision rendered in case of JOGINDAR KUMAR VS. STATE OF UP reported in AIR 1994 S.C. page 1349, certain observations are quoted as under :-

`No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Office in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave station without permission would do. The, there is the right to have some one informed. That right of the arrested person, upon request,

to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984, in England. These rights are inherent in Arts. 21 and 22 (1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the Supreme Court issued the following requirements :

(1) An arrested person being held in custody is entitled, if he so request to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) The police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Arts. 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals."

23. In India, Third Report of the National Police Commission at Pg-32 also suggested :

"... An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances :-

(i) The case involves a grave offence like murder, dacoity, robbery , rape etc. , and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines ... "

The Apex Court in case of GURCHARAN SINGH V. STATE [DELHI ADMN.] reported in AIR 1978 page 179 has in para-22 observed as under :-

"In other non-bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub sec (3) of Section 437, Cr.P.C. , if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437 (1) Cr.P.C. and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence."

The Apex Court in case of STATE VS. CAPTAIN JAGJIT SINGH reported in AIR 1962 SC 253 (Supra) has made observed as under :-

`It (the High Court) should then have taken into account the various considerations, such as,

> nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non bailable offence. It is true that under Section 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non bailable offence", we are of the opinion that the above observations equally apply to a case under Section 439 of the new Code and the legal position is not different under the new Code."

#. After considering the above observations as well as the averments made in the application and considering the draft undertaking which has been suggested by the learned advocate Mr.Saurin A. Shah, it is a duty of the Court to see and protect the interest of the person who have become victim in such grave incident and simultaneously also to consider the fate of the persons who are behind the bar because of this incident. It is also necessary to keep in mind the fact that now the chargesheet has been submitted by the Investigating Officer.

#. I have considered the objections raised by the learned Public Prosecutor against the present petition. The main contention of Learned P.P. is on merits and second objection that investigation is pending in a crucial stage. The third objection that F.S.L. Report is awaited and prima facie looking to preliminary report of FSL, the material which has been used by the builder is of poor quality and no standard material used by the builder and construction is not in accordance with Rules and Bye-laws of the Municipal Corporation. Looking to the objections of Learned P.P. this Court can examine the merits of the case and to pass appropriate order, but the real worry is that, it will come in way of the State Government in respect of pending other similar matters, which are more than 70 in numbers pending before this Court before the concerned Sessions Courts. This Court has passed similar order after considering the similar undertaking in Criminal Misc. Application Nos.

1677/2001 order dated 18-4-2001, Criminal Misc. Application No.2158 / 2001 order dated 24-4-2001 and Criminal Misc. Application No. 3068 / 2001 order dated 30-4-2001. In all these matters learned PP Mr.A.D.Oza had appeared and after considering his submission, this Court has passed order after taking into account, the undertaking which has been given by the concerned petitioner in each each of the petition. It is also necessary to note that in similar matter of the Builders, Crim. Misc. Application No. 1238 / 2001 order dated 1-5-2001, this Court [Coram : C.K.Buch, J.] has passed similar order considering the similar type of undertaking wherein also learned PP Mr.A.D.Oza has appeared. In such situation though, there is an objection of Learned Public Prosecutor, if other petitioner come forward before this Court and prepare to file same undertaking as considered by this Court in earlier petitions, then in such circumstances, this Court differ the decision on the ground that consistency is the corner stone of the Administration of Justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect for the rule of finality. It is a with a view to achieve consistency in judicial pronouncement, the Courts have evolved the rule of precedents. Principle of stair decisis etc. These rules and principles are based on public policy and if these are not followed by Court then there will be CHAOS in the administrations of justice. It is also necessary to note that it is well established principle that while examining the bail application, the Court normally avoid the reason, either in granting or refusing Bail Application.That recently in the case of KANTIBHADRA SHAH AND ANOTHER Vs. STATE OF WEST BENGAL, reported in 2001 [1] SCC page 722, the following observation of Apex Court in para-12 is reproduced as under :-

"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions

Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to nest stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the Court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985."

Therefore, considering the above observation made by Apex Court and considering to have consistence approach in similar matters, though there is an objection of learned public prosecutor Mr.A.D.Oza on merits, but I am not passing a reasoned order on merits on the ground that it will definitely come in a way of the State Government in pending such bail applications either before this Court or before Courts filed by the Builders and other connected persons. Earlier in all similar matters, I have not passed reasoned order and therefore, in present case also I am not passing the reasoned order in view of the above special facts and circumstances. However, it is necessary to note that now investigation is over and chargesheet is submitted in the Court by concerned Investigating Officer in the present case.

Recently, the Apex Court has considered the bail application and certain principles has been enumerated by the Apex Court in the case of PRAHALAD SINGH BHATTI Vs N.C.T., Delhi and another, reported in 2001 AIR S.C.W. page 1263. The relevant observations on para-8 are quoted as under :-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior means and and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered

> with, the larger interest of the public or State and similar other consideration. It has also to be kept in mind that for the purpose of granting the bail the Legislature has used kept in mind that for the purpose of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

In light of the above observations made by the Apex Court, it is necessary to note that if the accused released by the Court and his presence in the society adversely affect or having adverse impact in the mind of society, then normally bails cannot be granted, but in a converse situation if Accused released by the Court and his presence will helpful to the victim of the society, then Court may consider is a relevant factor for granting the bail in favour of accused.

In the present case, if the Builder remains in jail, it will not helpful in any manner to the members of housing society, whose flat/s are collapsed and their family members are died in such incident. But when Builder come forward with a bonafide undertaking and agreed to reconstruct the total flats collapsed in the incident at his own cost without taking a single penny from the concerned member/s and prepared to pay Rs.75,000/- to each person who died in incident and other benefited terms, then in such circumstances according to my opinion, the presence of the petitioner will not adversely affect or having any adverse impact on the society. This is also one of the important considerations while examining the bail application.

#. After considering the aforesaid statement made by the learned advocate Mr.Shah appearing for the petitioner to the effect that the petitioner will file necessary undertaking which has been suggested as above and considering the submissions of both the learned advocates and further considering the fact that as per the statement made at the Bar by learned advocate Mr.Shah that necessary undertaking will be filed by the petitioner before this Court within 10 days from the date

of release and considering the peculiar facts and circumstances emerging of this case so also taking into consideration observations made by the Hon'ble Apex Court and the Division Bench of this Court, following order is passed.

The parties do not press for reasoned order. Considering the submissions made on behalf of the parties, and having regard to the circumstances and facts of the case, the application is allowed and he is ordered to be released on bail in connection with Crime Register No. I-54 of 2001 registered at Satelite Police Station for the offence charged against him in this application on executing bond of Rs.25,000/- each (Rupees Twenty Five Thousand only) with one surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

a) not take undue advantage of his liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) mark their presence before Navrangpura Police Station on every Sunday between 9.00 a.m. to 2.00 p.m. for a period of three months from the date of release and thereafter present petitioner, shall mark his presence before the aforesaid police station once in a month preferably on 1st Sunday of each month till the trial is over.

f) furnish the address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

g) surrender his Passport, if any, to the lower court within a week;

h) it is directed to the petitioner to co-operate with the investigation and to remain personally present as and when required by the Investigating

Officer.

3. If breach of any of the above conditions is committed, the Sessions Judge will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case. It would be opened to the trial court concerned to give time to furnish the solvency certificate if prayed for.

#. In view of statement made by the learned Advocate Mr.Shah on behalf of the petitioner, necessary undertaking which is annexed to this order, is directed to be filed before this Court within 10 days from the date of the release of the petitioner without fail.

##. It is further directed to the petitioners to supply xerox copy of the affirmed undertaking to the office of the Public Prosecutor, concerned trial court and to the concerned investigating officer.

##. It is also made it clear that the amount of Rs.75,000/- in respect of victim who died in the incident, shall not come in the way for claiming compensation in accordance with law.

##. It is further directed to the petitioners that in pursuance of the statement made before this court, necessary undertaking as referred to in this order is required to be filed before this Court by the petitioner within 10 days from the date of release and the such undertaking is required to be strictly complied with by the petitioner without fail, otherwise in the event of non compliance of any such term of the said undertakings, the respondent State as well as the concerned members of `Ayodhya Apartments' - a building in question in the present order and legal heirs of victim are entitled to file necessary application before this Court for cancellation of order granting bail in favour of the petitioner.

##. It is open for the parties including the concerned members of the said `Ayodhya Apartments' and legal heirs of the victim in case of any difficulty in respect of any such terms as incorporated in the undertaking will be at liberty to apply before this Court by way of necessary application.

##. This order is passed by this Court considering the peculiar facts and circumstances of the case as well as

considering the undertaking of the petitioner and undertaking to make the payment to the victim, therefore this order may not be treated as precedent for other similar cases.

##. However, it is made it clear that undertaking that may be filed by the petitioner before this Court pursuant to the order passed by this Court, will not come in the way in any manner while facing and / or defending the proceedings arising from C.R. No. I - 54 / 2001 of Satelite Police Station. It is also made it clear that the present undertaking which will be filed by the present petitioner only in connection with relief of grant of bail in favour of the petitioner and therefore such undertaking will not amounts to an admission of the petitioner in respect of criminal liability which will be obviously required to be faced by the petitioner in respect of the offence registered against him pursuant to C.R. No. I - 54 / 2001 - Navrangpura Police Station.

##. Before parting with the present order, according to my opinion, the humanitarian stand and approach taken by the petitioner is in real sense satisfying the genuine rehabilitation of the members and victim affected on account of earthquake and have become victim of this unprecedented earthquake.

Rule is made absolute accordingly. Direct service is permitted today.

Date : 22-5-2001 [H.K.Rathod, J.]

Vyas

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3553 of 2001

Kanubhai Dhulabhai Patel

Versus

STATE OF GUJARAT

: U N D E R T A K I N G :

"I, Kanubhai Dhulabhai Patel (hereinafter be referred to as "the petitioner"), Shri Ramanbhai Dhulabhai Paten and Kantibhai Dhulabhai Patel, partners of M/s. RK Developers, do hereby undertake before the Hon'ble Court and state as under:

1. That the petitioner Kanubhai Dhulabhai Patel and his partners namely Ramanbhai Dhulabhai Patel and kantibhai Dhulabhai Patel carried on the business of construction in the name of M/s. RK Developers since January, 1995 and in that process had constructed Ayodhya Apartment consisting of A and B Blocks whereby B Block of Ayodhya Apartment collapsed leading to death of five persons of B BLock of Ayodhya Apartments.

2. That on 26.1.2001, B Block of Ayodhya Apartments collapsed due to earthquake and on learning the same, the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel who resides at nearby place of Ayodhya Apartments immediately rushed to the said place and made efforts by removing the debris of the collapsed building with a hope of rescuing the life of any person who got entangled amongst the debris of the collapsed building and the said aspect was reported in the local newspaper Sandesh dated 30.1.2001.

3. That the present petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers undertake before this Hon'ble Court that the B Block collapsed building of Ayodhya Apartment was constructed by their firm M/s. RK Developers, undertake to reconstruct and restore all the sixteen flats entirely at their costs.

4. That the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers undertake to complete the construction by erecting the sixteen flats within 30 months from today and further undertake to put the respective flat owners of the B BLock of Ayodhya Apartments in actual possession of the reconstructed flats.

5. That the petitioner and his partners,namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers further undertake before this Hon'ble COurt that any failure on their part to deliver the possession of reconstructed flat to the respective owner/s by the end of 30 months from today, then the sum of rs.5,000.00 per month to each of such flat owner shall be paid toward rent and/or compensation.

6. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, further make it clear that if any of the flat owners who were resident of B Block of Ayodhya Apartments chooses not to have a reconstructed flat, then, the amount received from such flat owner/s shall be paid back.

7. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, also are ready to pay Rs.75000.00 to the legal heirs of the deceased within two months from today.

8. That the petitioner and his partners namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers, however, make it clear that none of the flat owners of B Block of Ayodhya Apartmenrts would be compelled in any way to give any contribution by resorting to any litigation of any nature.

9. That the petitioner and his partners, namely Ramanbhai Dhulabhai Patel and Kantibhai Dhulabhai Patel of M/s. RK Developers put their respective signatures herein below and undertake before the Hon'ble Court to comply with the aforesaid aspects in its true spirit.

Signed and executed on_____day of May, 2001 at Ahmedabad.

_____

_____

_____"